

50.55. Conduct of Planning Commission and Board of Design Review Hearing

1. At the beginning of a hearing an announcement shall be made to those in attendance that:
 - A. Lists the applicable approval criteria by Development Code section number and Comprehensive Plan section number.
 - B. Testimony, arguments and evidence must be directed toward the applicable criteria or other criteria in the Comprehensive Plan or Development Code which the person believes to apply to the application.
 - C. Failure to raise an issue accompanied by statements or evidence with sufficient specificity to afford the decision making authority and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue.
 - D. Failure of the applicant to raise constitutional or other issues relating to the proposed conditions of approval with sufficient specificity to allow the City to respond to the issue precludes an action for damages in circuit court.
 - E. The decision making authority must be impartial and that members of the decision making authority shall not have any bias or personal or business interest in the outcome of the application. Prior to the receipt of any testimony, members of the decision making authority must announce any ex parte contacts. The decision making authority shall afford parties an opportunity to challenge any member thereof based on bias, conflicts of interest, or ex parte contacts.
 - F. States that if any member of the decision making authority has visited the site, they should describe generally what was observed.
 - G. Summarizes the procedure of the hearing.
2. After the announcements described in Section 50.55.1, the Chair shall call for presentation of the staff report. Staff shall describe the proposal and provide a recommendation.

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3. After the presentation of the staff report, the Chair shall call for the applicant's testimony.
4. After the applicant's testimony, the Chair shall call for other evidence or testimony in the following sequence unless the decision making authority consents to amend the sequence of testimony:
 - A. First, evidence or testimony in support of the application.
 - B. Second, evidence or testimony in opposition to the application.
 - C. Finally, evidence or testimony that is neither in support nor in opposition to the application.
5. The Chair shall call for rebuttal by the applicant. Rebuttal testimony shall be limited to the scope of the issues raised by evidence and arguments submitted into the record by persons in opposition to the application. Should the applicant submit new evidence in aid of rebuttal, the Chair shall allow any person to respond to such new evidence, and provide for final rebuttal by the applicant.
6. The Chair shall offer staff an opportunity to make final comments and answer questions.
7. Provisions for holding a record open or continuing a hearing set forth in ORS 197.763 (6) shall apply under this Code in a manner consistent with state law.

50.57. Time Limits on Planning Commission and Board of Design Review Hearing Testimony

1. The purpose of time limits on testimony is to provide all interested persons with an adequate opportunity to present and respond to testimony while at the same time ensuring that hearings conducted by the Planning Commission and the Board of Design Review are conducted in an efficient and expeditious manner. Time limits on testimony shall not be placed on staff presentations. The following time limits on testimony shall be observed during a hearing conducted by the decision making authority unless the decision making authority consents to adjust the time limits in a particular instance:
 - A. Up to and including 20 minutes for the applicant's presentation.
 - B. Up to and including 10 minutes for a representative of a recognized NAC, government or government agency, or other organized group recognized by the Planning Commission or Board of Design Review.
 - C. Up to and including 5 minutes each for other persons.
 - D. Up to and including 5 minutes for rebuttal.
2. The time limits set forth in Section 50.57.1 shall not include time taken by questions from or response to questions of the decision making authority.

50.58. Testimony, Exhibits, and Other Evidence before the Planning Commission and Board of Design Review.

1. Any person may present evidence at hearing before the decision making authority on a Type 3 or Type 4 proposal.
2. Any person may submit exhibits or written comments prior to the hearing. All submittals which are more than two (2) letter sized pages must include no fewer than ten (10) complete copies of the materials being submitted. Written comments or exhibits submitted prior to the hearing to be submitted by staff at the hearing must be received by the Director no later than 4:30 p.m. on the day of the scheduled hearing.
3. In order to be made part of the record, written comments or exhibits submitted at the hearing must be filed with the recording secretary and offered to the decision making authority as part of the record. No fewer than ten (10) copies of written comments or exhibits must be provided if those materials are submitted at the hearing.
4. Exhibits or written comments that are merely referred to in testimony but which are not offered to the decision making authority as part of the record in accordance with this Section shall not become part of the record of the proceedings.

50.60. Appeal of a Type 1 Decision

1. The decision making authority's decision on a Type 1 application may be appealed only by the applicant. The appeal must be on an Appeal Form provided by the Director and must be received by the Community Development Department within twelve (12) calendar days after signed written notice of the decision was dated and mailed. [ORD 4312; June 2004]
2. Within seven (7) calendar days after an appeal has been filed, the Director shall determine whether it contains at least the following information:
 - A. The case file number designated by the City,
 - B. The name and signature of the applicant as appellant.
 - C. Specification of evidence or written testimony provided with the application to which the decision under appeal is contrary.
 - D. The specific approval criteria, condition, or both being appealed, the reasons why a finding, condition, or both is in error as a matter of fact, law or both, and the evidence relied on to prove the error.
 - E. The appeal fee, as established by resolution of the City Council.
3. Failure to comply with the requirements of Sections 50.60.1 and 50.60.2 is jurisdictional and deprives the appellant of an opportunity for the appellate decision making authority to hear an appeal.
4. The appellate decision making authority on appeal of Type 1 decisions shall be the Planning Commission or Board of Design Review. The Director shall determine the appropriate appellate decision making authority for Type 1 decision appeals based upon the nature and characteristics of the proposal under appeal and any associated application. The appeal hearing shall be *de novo*, which means new evidence and argument can be introduced in writing, orally, or both. The hearing of the appeal shall be conducted in the manner specified in Section 50.80 through 50.83. The decision of the designated appellate decision making authority for appeals of Type 1 decisions shall be the final decision and shall not be subject to further appealed to the City Council.

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5. For appeals of Type 1 decisions filed under Section 50.60, the Director shall mail written notice of an appeal hearing to the appellant not less than twenty (20) calendar days prior to the appeal hearing, but need not post or publish the notice in a newspaper.
6. Not less than seven (7) calendar days before the date of the appeal hearing, the Director shall prepare and make available to the public, for review and inspection, a copy of the staff report regarding the appeal and shall provide a copy of the staff report and recommendation to the appellate decision making authority and to the appellant. The Director shall provide a copy of the staff report to the public at reasonable cost upon request.
7. Appeal hearings before the Planning Commission or Board of Design Review shall be conducted in accordance with Section 50.80 through 50.83 of this Code. Appeal hearings shall be recorded on audio only or audio and video tape.
8. At the conclusion of the hearing on the appeal, the appellate decision making authority shall take one of the following actions:
 - A. Continue the hearing to a date, time, and location certain, which shall be announced by the Chair. Notice of the date, time, and location certain of the continued hearing is not required to be mailed, published, or posted, unless the hearing is continued without announcing a date, time, and location certain, in which case notice of the continued hearing shall be given as though it was the initial hearing.
 - B. Reverse or affirm the decision under appeal, with or without conditions or changes.
 1. If the decision making authority takes action pursuant to Section 50.60.8.B, the decision making authority shall announce a brief summary of the basis for the decision, and that a land use order will be issued as provided in Section 50.60.9; provided, the proceedings may be continued for the purpose of considering such land use order without taking new testimony or evidence.

50.60.8.B.

2. Provisions for holding a record open or continuing a hearing set forth in ORS 197.763 (6) shall apply under this Ordinance in a manner consistent with state law.
9. After the public record on the appeal closes, a written decision in the form of a land use order regarding the application shall be prepared and contain the following:
 - A. A statement of the facts that the appellate decision making authority has relied on which demonstrate the decision under appeal is reversed or affirmed based on the criteria relevant to the appeal.
 - B. A statement of conclusions based on the findings.
 - C. If the appellate decision making authority changes conditions of approval, changes denial to approval, changes denial to approval subject to conditions, or changes approval to denial, the order shall include findings explaining the basis for such change and condition.
10. Within approximately seven (7) calendar days from the date that the appellate decision making authority adopts a land use order, the Director shall cause the order to be signed, dated, and mailed to the appellant and other persons who appeared orally or in writing before the public record closed.
11. A decision on an appeal is final on the date the signed land use order is dated and mailed.
12. Only one appeal of a Type 1 decision is permitted before the City. Therefore, the notice of a Type 1 decision on appeal shall indicate the decision may be appealed to the Land Use Board of Appeals as provided in ORS 197.805 through ORS 197.860.

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13. If a decision of the appellate decision making authority is remanded to the City by the State of Oregon Land Use Board of Appeals (LUBA), the appellate decision making authority shall either:
 - A. Hold a hearing on the issue upon which LUBA remanded the decision without opening the record for additional evidence. Notice of the hearing on remand shall be given to all persons who testified either orally or in writing before the appellate decision making authority at the hearing that led to the decision remanded by LUBA. The notice shall set forth issues on remand that will be considered by the appellate decision making authority. Testimony shall be allowed at the hearing before the appellate decision making authority, except that testimony shall be limited to the issues upon which LUBA remanded the decision to the City. If the application on remand is amended in a manner which changes the applicable criteria or the factual basis on which LUBA or the appellate decision making authority based its decision regarding an issue or issues not remanded, testimony may be provided on the full scope of the amended application. At the conclusion of the hearing, the appellate decision making authority shall render a written decision; or
 - B. Hold a hearing on the issue upon which LUBA remanded the decision and open the record for additional evidence. Notice of the hearing on remand shall be given in the same manner in which the original hearing notice was provided. The notice shall list the applicable approval criteria and state that testimony will be limited to the criteria or the issues upon which LUBA remanded the decision to the City. If the application on remand is amended in a manner which changes the applicable criteria or the factual basis on which LUBA or the appellate decision making authority based its decision regarding an issue or issues not remanded, the notice shall list the applicable approval criteria and state that testimony may be provided on the full scope of the amended application. At the conclusion of the hearing, the appellate decision making authority shall render a written decision. A decision of the appellate decision making authority on remand may be appealed to LUBA.

50.65. Appeal of a Type 2 Decision

1. The decision making authority's decision on a Type 2 application may be appealed only by the applicant or by any other person who submitted written evidence prior to the decision of the Director. The appeal must be on an Appeal Form provide by the Director and must be received within twelve (12) calendar days after written notice of the decision was dated and mailed. [ORD 4312; June 2004]
2. Within seven (7) calendar days after an appeal has been filed, the Director shall determine whether an appeal contains at least the following information:
 - A. The case file number designated by the City.
 - B. The name and signature of each appellant.
 - C. Reference to the written evidence provided to the decision making authority by the appellant that is contrary to the decision.
 - D. If multiple people sign and file a single appeal, the appeal shall include verifiable evidence that each appellant provided written testimony to the decision making authority and that the decision being appealed was contrary to such testimony. The appeal shall designate one person as the contact representative for all pre-appeal hearing contact with the City. All contact with the City regarding the appeal, including notice, shall be through this contact representative.
 - E. The specific approval criteria, condition, or both being appealed, the reasons why a finding, condition, or both is in error as a matter of fact, law or both, and the evidence relied on to allege the error.
 - F. The appeal fee, as established by resolution of the City Council.
3. Failure to comply with the requirements of Sections 50.65.1 and 50.65.2 is jurisdictional and deprives the appellant of an opportunity for the appellate decision making authority to hear an appeal.

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4. Except for the appeals of Director's Interpretation (Section 40.25), the appellate decision making authority on appeal of Type 2 decisions shall be the Planning Commission or Board of Design Review. The Director shall determine the appropriate appellate decision making authority for Type 2 decision appeals based upon the nature and characteristics of the proposal under appeal and any associated application. The appeal hearing for Type 2 decisions shall be *de novo*, which means new evidence and argument can be introduced in writing, orally, or both. The hearing of the appeal shall be conducted in the manner specified in Section 50.80 through 50.83. The decision of the designated appellate decision making authority for appeal of Type 2 decisions shall be the final decision and shall not be subject to further appeal to the City Council.
5. The appellate decision making authority for Director's Interpretation (Section 40.25) shall be the City Council. The appeal hearing for Director's Interpretation shall be *de novo*, which means new evidence and argument can be introduced in writing, orally, or both. The hearing of the appeal shall be conducted in accordance with Section 50.85 through 50.88 except as otherwise required by statute.
6. For appeals of Type 2 decisions filed under Section 50.65, the Director shall mail written notice of an appeal hearing to parties listed in Section 50.65.1 not less than twenty (20) calendar days prior to the appeal hearing, but need not post or publish the notice in a newspaper.
7. Not less than seven (7) calendar days before the date of the appeal hearing, the Director shall prepare and make available to the public, for review and inspection, a copy of the staff report and shall provide a copy of the staff report to the appellate decision making authority and to the appellant. The Director shall provide a copy of the staff report to members of the public at reasonable cost upon request.
8. Appeal hearings before the Planning Commission or Board of Design Review shall be conducted in accordance with Section 50.80 through 50.83 of this Code. Appeal hearings shall be recorded on audio only or audio and video tape.

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9. At the conclusion of the hearing on the appeal, the appellate decision making authority shall take one of the following actions:
 - A. Continue the hearing to a date, time, and location certain, which shall be announced by the Chair. Notice of the date, time, and location certain of the continued hearing is not required to be mailed, published, or posted, unless the hearing is continued without announcing a date, time, and location certain, in which case notice of the continued hearing shall be given as though it was the initial hearing.
 - B. Reverse or affirm the decision under appeal, with or without conditions or changes.
 1. If the decision making authority takes action pursuant to Section 50.65.9.B, the decision making authority shall announce a brief summary of the basis for the decision, and that a land use order will be issued as provided in Section 50.65.10; provided, the proceedings may be continued for the purpose of considering such land use order without taking new testimony or evidence.
 2. Provisions for holding a record open or continuing a hearing set forth in ORS 197.763 (6) shall apply under this Ordinance in a manner consistent with state law.
10. After the public record on the appeal closes, a written decision in the form of a land use order regarding the application shall be prepared and contain, at a minimum, the following:
 - A. A statement of the facts that the appellate decision making authority has relied on which demonstrate the decision under appeal is reversed or affirmed based on the criteria relevant to the appeal.
 - B. A statement of conclusions based on the findings.
 - C. If the appellate decision making authority changes conditions of approval, changes denial to approval, changes denial to approval subject to conditions, or changes approval to denial, the order shall include findings explaining the basis for such change and condition.

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11. Within approximately seven (7) calendar days from the date that the appellate decision making authority adopts a land use order, the Director shall cause the order to be signed, dated, and mailed to the appellant and other persons who appeared orally or in writing before the public record closed.
12. A decision on an appeal is final on the date the signed land use order is dated and mailed.
13. Only one appeal of a Type 2 decision is permitted before the City. Therefore the notice of a Type 2 decision on appeal shall indicate the decision may be appealed to the Land Use Board of Appeals as provided in ORS 197.805 through ORS 197.860.
14. If a decision of the appellate decision making authority is remanded to the City by the State of Oregon Land Use Board of Appeals (LUBA), the appellate decision making authority shall either:
 - A. Hold a hearing on the issue upon which LUBA remanded the decision without opening the record for additional evidence. Notice thereof shall be given to all persons who testified either orally or in writing before the appellate decision making authority at the hearing that led to the decision remanded by LUBA. The notice shall set forth issues on remand that will be considered by the appellate decision making authority. Testimony shall be allowed at the hearing before the appellate decision making authority, except that testimony shall be limited to the issues upon which LUBA remanded the decision to the City. If the application on remand is amended in a manner which changes the applicable criteria or the factual basis on which LUBA or the appellate decision making authority based its decision regarding an issue or issues not remanded, testimony may be provided on the full scope of the amended application. At the conclusion of the hearing, the appellate decision making authority shall render a written decision; or

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- B. Hold a hearing on the issue upon which LUBA remanded the decision and open the record for additional evidence. Notice of the hearing on remand shall be given in the same manner in which the appeal hearing notice was provided. The notice shall list the applicable approval criteria and state that testimony will be limited to the criteria or the issues upon which LUBA remanded the decision to the City. If the application on remand is amended in a manner which changes the applicable criteria or the factual basis on which LUBA or the appellate decision making authority based its decision regarding an issue or issues not remanded, the notice shall list the applicable approval criteria and state that testimony may be provided on the full scope of the amended application. At the conclusion of the hearing, the appellate decision making authority shall render a written decision.

50.70. Appeal of a Type 3 Decision

1. The decision making authority's decision on a Type 3 application may be appealed only by the applicant or any other person who participated by providing either oral or written evidence on the record leading to the decision by the decision making authority. The appeal must be on an Appeal Form provided by the Director and must be received within ten (10) calendar days after the signed written land use order of the decision making authority was dated and mailed. [ORD 4312; June 2004]
2. Within seven (7) calendar days after an appeal has been filed, the Director shall determine whether an appeal contains at least the following information:
 - A. The case file number designated by the City.
 - B. The name and signature of each appellant.
 - C. Reference to the oral or written evidence provided to the decision making authority by the appellant that is contrary to the decision.
 - D. If multiple people sign and file a single appeal, the appeal shall include verifiable evidence that each appellant provided written testimony to the decision making authority and that the decision being appealed was contrary to such testimony. The appeal shall designate one person as the contact representative for all pre-appeal hearing contact with the City. All contact with the City regarding the appeal, including notice, shall be through this contact representative.
 - E. The specific approval criteria, condition, or both being appealed, the reasons why a finding, condition, or both is in error as a matter of fact, law or both, and the evidence relied on to allege the error.
 - F. The appeal fee, as established by resolution of the City Council.
3. Failure to comply with the requirements of Sections 50.70.1 and 50.70.2 is jurisdictional and deprives the City Council of authority to consider the appellant's submittal and the appellant of an opportunity for the appellate decision making authority to hear an appeal.

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4. The appellate decision making authority on appeal of Type 3 decisions shall be the City Council. The appeal hearing shall be *de novo*, which means new evidence and argument can be introduced in writing, orally, or both.
5. The record shall consist of the following:
 - A. All staff reports and memoranda prepared regarding the proposal that were presented to the decision making authority.
 - B. All written testimony and all exhibits, maps, documents or other written materials presented to and not rejected by the decision making authority during the proceedings on the proposal.
 - C. The land use order of the decision making authority.
 - D. The minutes of the decision making authority proceedings regarding the proposal.
 - E. The appellant may request, and the City Council may allow, the appeal hearing be conducted on the record established at the decision making authority public hearing. If such a request is made and granted, a transcript of the decision making authority proceedings is required. The appellant shall remit a fee to cover the cost of the transcript of the decision making authority's proceedings within five days after the Planning Director estimates the cost of the transcript. Within ten days of notice of completion of the transcript, the appellant shall remit the balance due on the cost of the transcript. In the event that the Council denies the request for an on the record appeal hearing, and holds a *de novo* hearing, the transcript fee may be refunded. If the transcription estimate exceeds the transcription cost, the balance shall be refunded to the appellant.
6. The appeal hearing shall be conducted in accordance with Section 50.85 through 50.88 except as otherwise required by statute.
7. For appeals of Type 3 decisions filed under Section 50.70, the City shall mail written notice of an appeal hearing to parties described in Section 50.45.2 not less than ten (10) calendar days prior to the appeal hearing, but need not post or publish the notice in a newspaper.

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8. Not less than seven (7) calendar days before the date of the appeal hearing, the Director shall prepare and make available to the public, for review and inspection, a copy of the staff report and shall provide a copy of the staff report to the appellate decision making authority and to the appellant. The Director shall provide a copy of the staff report to members of the public at reasonable cost upon request.
9. At the conclusion of the hearing on the appeal, the appellate decision making authority shall take one of the following actions:
 - A. Continue the hearing to a date, time, and location certain, which shall be announced by the Chair. Notice of the date, time, and location certain of the continued hearing is not required to be mailed, published, or posted, unless the hearing is continued without announcing a date, time, and location certain, in which case notice of the continued hearing shall be given as though it was the initial hearing.
 - B. Reverse or affirm the decision under appeal, with or without conditions or changes.
 1. If the decision making authority takes action pursuant to Section 50.70.9.B, the decision making authority shall announce a brief summary of the basis for the decision, and that a land use order will be issued as provided in Section 50.70.10; provided, the proceedings may be continued for the purpose of considering such land use order without taking new testimony or evidence.
 2. Provisions for holding a record open or continuing a hearing set forth in ORS 197.763 (6) shall apply under this Ordinance in a manner consistent with state law.
 - C. Remand the decision to the decision making authority for further proceedings consistent with the decision on appeal provided that the appellate decision making authority first determines whether the remand would conflict with the City's obligation under ORS 227.178 to issue a timely final decision. If the decision is to remand, the purpose of the remand, including any specific procedures or subjects to be addressed shall be directed to the decision making authority.

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10. After the public record on the appeal closes, a written decision in the form of a land use order regarding the application shall be prepared and contain the following:
 - A. A statement of the facts that the appellate decision making authority finds show the decision under appeal is reversed or affirmed based on the criteria relevant to the appeal.
 - B. A statement of conclusions based on the findings.
 - C. If the appellate decision making authority changes conditions of approval, changes denial to approval, changes denial to approval subject to conditions, or changes approval to denial, the order shall include findings explaining the basis for such change and condition.
11. Within approximately ten (10) calendar days from the date that the appellate decision making authority votes on the motion regarding the appeal, the Director shall cause a land use order to be signed, dated, and mailed to the appellant and other persons who appeared orally or in writing before the Planning Commission, Board of Design Review, City Council, or all while the public record on the appeal was open. [ORD 4312; June 2004]
12. A decision on an appeal is final on the date the signed land use order is dated and mailed. A land use order may consist of an ordinance where appropriate. The Mayor or designee shall sign the land use order.
13. If a decision of the City Council is remanded to the City by the State of Oregon Land Use Board of Appeals (LUBA), the City Council shall either:

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- A. Hold a hearing on remand if the issue upon which LUBA remanded the decision can be resolved by the City Council without reopening the record for additional evidence. Notice thereof shall be given to all persons who testified either orally or in writing before the City Council at the hearing or hearings that led to the decision remanded by LUBA. The notice shall set forth issues on remand that will be considered by the City Council. Testimony shall be allowed at the hearing before the City Council, except that testimony shall be limited to the issues upon which LUBA remanded the decision to the City. If the application on remand is amended in a manner which changes the applicable criteria or the factual basis on which LUBA or the City Council based its decision regarding an issue or issues not remanded, testimony may be provided on the full scope of the amended application. At the conclusion of the hearing, the City Council shall render a written decision; or
- B. Remand the application, ordinance, or both to the decision making authority if the issue upon which LUBA remanded the decision requires reopening the record for additional evidence. Notice of the hearing on remand shall be given in the same manner in which the initial public hearing notice was provided. The notice shall list the applicable approval criteria and state that testimony will be limited to the criteria or the issues upon which LUBA remanded the decision to the City. If the application on remand is amended in a manner which changes the applicable criteria or the factual basis on which LUBA or the City Council based its decision regarding an issue or issues not remanded, the notice shall list the applicable approval criteria and state that testimony may be provided on the full scope of the amended application. At the conclusion of the hearing, the decision making authority shall render a written decision. A decision of the decision making authority on remand may be appealed to the City Council pursuant to Section 50.70.

50.75. Appeal of a Type 4 Decision

1. The decision making authority's recommendation on a Type 4 application may be appealed only by the applicant or any other person who participated by providing either oral or written evidence leading to the decision of the decision making authority. The appeal must be received within ten (10) calendar days after the signed written land use order of the decision making authority was dated and mailed.
2. The Director shall determine whether an appeal contains at least the following information:
 - A. The case file number designated by the City.
 - B. The name and signature of each appellant.
 - C. Reference to the oral or written evidence provided to the decision making authority by the appellant that is contrary to the decision.
 - D. If multiple people sign and file a single appeal, the appeal shall include verifiable evidence that each appellant provided written testimony to the decision making authority and that the decision being appealed was contrary to such testimony. The appeal shall designate one person as the contact representative for all pre-appeal hearing contact with the City. All contact with the City regarding the appeal, including notice, shall be through this contact representative.
 - E. The specific approval criteria, condition, or both being appealed, the reasons why the finding, condition, or both is in error as a matter of fact, law or both, and the evidence relied on to allege the error.
 - F. The appeal fee, as established by resolution of the City Council.
3. Failure to comply with the requirements of Sections 50.75.1 and 50.75.2 is jurisdictional and deprives the appellant of an opportunity for the appellate decision making authority to hear an appeal.

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4. The appellate decision making authority on appeal of Type 4 decision shall be the City Council. The appeal hearing shall be *de novo*, which means new evidence and argument can be introduced in writing, orally, or both. The hearing of the appeal shall be conducted in the manner specified in Section 50.85 through 50.88 except as otherwise required by statute.
5. For appeals filed under Section 50.75, the City shall mail written notice of an appeal hearing to parties described in Section 50.75.1 not less than twenty (20) calendar days prior to the appeal hearing, but need not post or publish the notice in a newspaper.
6. Not less than seven (7) calendar days before the date of the appeal hearing, the Director shall prepare and make available to the public, for review and inspection, a copy of the staff report and shall provide a copy of the staff report to the appellate decision making authority and to the appellant. The Director shall provide a copy of the staff report to the public at reasonable cost upon request.
7. At the conclusion of the City Council hearing in the appeal of a Type 4 decision, the Council shall take one of the following actions:
 - A. Continue the hearing to a date, time, and location certain, which shall be announced by the Mayor. Notice of the date, time, and location certain of the continued hearing is not required to be mailed, published, or posted, unless the hearing is continued without announcing a date, time, and location certain, in which case notice of the continued hearing shall be given as though it was the initial hearing.
 - B. Remand the decision to the decision making authority for further proceedings consistent with the Council's decision unless the remand would conflict with the City's obligation under ORS 227.178 to issue a timely final decision. If the decision is to remand, the purpose of the remand, including any specific procedures or subjects to be addressed shall be directed to the decision making authority.
 - C. Reverse or affirm the decision being appealed, with or without changes.

50.75.7.C.

1. If Council indicates an intention to adopt one or more ordinances to amend the zone map, text, or both pursuant to Section 50.75.7.C, then the City Attorney shall prepare the ordinance. Ordinances shall thereafter be adopted pursuant to the City Charter. The City Council shall adopt or approve written findings which demonstrate either that approval will comply with applicable approval criteria or that in the case of denial, the approval criteria gave not been satisfied.
2. Provisions for holding a record open or continuing a hearing set forth in ORS 197.763 (6) shall apply under this Ordinance in a manner consistent with state law.
8. After the public record on the appeal closes, a written decision in the form of a land use order.
9. Within approximately seven (7) calendar days from the date that the appellate decision making authority adopts a final decision under appeal, the Director shall cause a land use order to be signed, dated, and mailed to the appellant and other persons who appeared orally or in writing before the Planning Commission, Board of Design Review, City Council, or all while the public record on the appeal was open.
10. A decision on an appeal is final on the date the signed land use order is dated and mailed. A land use order may include an ordinance.
11. Only one appeal of a decision is permitted before the City. Therefore the notice of a decision on appeal shall indicate the decision may be appealed to the Land Use Board of Appeals as provided in ORS 197.805 through ORS 197.860.
12. If a decision of the City Council is remanded to the City by the State of Oregon Land Use Board of Appeals (LUBA), the City Council shall either:

50.75.12.

- A. Hold a hearing on remand if the issue upon which LUBA remanded the decision can be resolved by the City Council without reopening the record for additional evidence. Notice thereof shall be given to all persons who testified either orally or in writing before the City Council at the hearing or hearings that led to the decision remanded by LUBA. The notice shall set forth issues on remand that will be considered by the City Council. Testimony shall be allowed at the hearing before the City Council, except that testimony shall be limited to the issues upon which LUBA remanded the decision to the City. If the application on remand is amended in a manner which changes the applicable criteria or the factual basis on which LUBA or the City Council based its decision regarding an issue or issues not remanded, testimony may be provided on the full scope of the amended application. At the conclusion of the hearing, the City Council shall render a written decision; or
- B. Remand the application, ordinance, or both to the decision making authority if the issue upon which LUBA remanded the decision requires reopening the record for additional evidence. Notice of the hearing on remand shall be given in the same manner in which the initial public hearing notice was provided. The notice shall list the applicable approval criteria and state that testimony will be limited to the criteria or the issues upon which LUBA remanded the decision to the City. If the application on remand is amended in a manner which changes the applicable criteria or the factual basis on which LUBA or the City Council based its decision regarding an issue or issues not remanded, the notice shall list the applicable approval criteria and state that testimony may be provided on the full scope of the amended application. At the conclusion of the hearing, the decision making authority shall render a written decision. A decision of the decision making authority on remand may be appealed to the City Council pursuant to Section 50.75.

50.80. Conduct of Planning Commission or Board of Design Review Appeal Hearing

1. The Planning Commission and the Board of Design Review shall conduct appeal hearings pursuant to the requirements of this Section.
2. At the beginning of the appeal hearing, an announcement shall be made to those in attendance that:
 - A. States the general nature of the appeal.
 - B. Lists the applicable approval criteria.
 - C. Testimony, arguments, and evidence must be directed toward the applicable criteria or other criteria in the Comprehensive Plan or Development Code which the person believes to apply to the decision.
 - D. Failure to raise an issue accompanied by statements or evidence sufficient to afford the appellate decision making authority and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue.
 - E. Failure of the applicant, applicant as appellant, or appellant to raise constitutional or other issues relating to the proposed condition of approval with sufficient specificity to allow the City or its designee to respond to the issue precludes an action for damages in circuit court.
 - F. The appellate decision making authority must be impartial and that members of the appellate decision making authority shall not have any bias or personal or business interest in the outcome of the application. Members of the appellate decision making authority must announce any ex parte contacts. The appellate decision making authority shall afford parties an opportunity to challenge any member thereof based on bias, conflicts of interest, or ex parte contacts.
 - G. States that if any member of the appellate decision making authority has visited the site, they describe generally what was observed.
 - H. Summarize the procedure of the hearing.

50.80.

3. The Chair shall next ask if there is any challenge to a member of the appellate decision making authority right to consider the appeal. Unless the challenge is based upon information disclosed pursuant to Section 50.80.2.F. and G, a challenging party must deliver a written document stating the reasons and authority for such challenge to the member challenged and the City at least 24 hours prior to the hearing.
4. After the announcements and statements of Sections 50.80.2 and 50.80.3 are concluded, the Chair shall call for presentation of the staff report. Staff shall describe the proposal and explain the reasons behind the Director's decision.
5. The Chair shall invite testimony on the appeal to take place in the following order unless the appellate decision making authority consents to amend the order of testimony:
 - A. The applicant, if not the appellant.
 - B. The applicant as appellant.
 - C. The appellant, if not the applicant.
 - D. Testimony in support of the appeal.
 - E. Testimony in opposition to the appeal.
 - F. Testimony that is neither in support nor in opposition to the appeal.
 - G. Rebuttal testimony by the appellant, if the appellant is the applicant. The appellant's rebuttal is limited to responding to testimony previously submitted and shall be based solely on the evidence in the record.
6. The Chair shall allow for final comments from staff.
7. The appellate decision making authority shall deliberate and make a decision. Deliberations may include questions to or testimony by City staff regarding the criteria, evidence and testimony in the record.

50.82. Time Limits on Planning Commission or Board of Design Review Appeal Hearing Testimony

1. The purpose of time limits on testimony at an appeal hearing before the Planning Commission or Board of Design Review is to provide all interested persons with an adequate opportunity to present and respond to testimony while at the same time ensuring that the hearing can be conducted in an efficient and expeditious manner. Time limits on testimony shall not be placed on staff presentations. The following time limits on testimony shall be observed during a hearing conducted by the appellate decision making authority unless the appellate decision making authority consents to adjust the time limits in a particular instance:
 - A. Up to and including 20 minutes for the applicant, if not the appellant, or the applicant as appellant's presentation.
 - B. Up to and including 20 minutes for the appellant's, if not the applicant, presentation.
 - C. Up to and including 10 minutes for a representative of a recognized NAC, government or government agency, or other organized group recognized by the appellate decision making authority.
 - D. Up to and including 5 minutes each for other persons.
 - E. Up to and including 5 minutes of rebuttal for the applicant, if not the appellant, or the appellant who is the applicant.
2. The time limits set forth in Section 50.82.1 shall not include time taken by questions from or response to questions of the appellate decision making authority.

50.83. Testimony, Exhibits, and Other Evidence before the Planning Commission and Board of Design Review.

1. Any person may present testimony at a hearing before the appellate decision making authority on an appeal of a Type 1 or Type 2 decision.
2. Any person may submit exhibits or written comments prior to the hearing. All submittals which are more than two (2) letter sized pages must include of no fewer than ten (10) complete copies of the materials being submitted. Written comments or exhibits submitted prior to the hearing to be submitted by staff at the hearing must be received by the Director no later than 4:30 p.m. on the day of the scheduled hearing.
3. Written comments or exhibits submitted at the hearing must be filed with the recording secretary and offered into the record before the appellate decision making authority. No fewer than ten (10) copies of written comments or exhibits must be provided if those materials are submitted at the hearing.
4. Exhibits or written comments that are merely referred to in testimony but which are not offered into the record before the appellate decision making authority in accordance with this Section shall not become part of the record of the proceedings.

